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| TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i> | Application Number | 10/684,668 |
| | Filing Date | 10/14/2003 |
| | First Named Inventor | Steven T. Mitchell |
| | Art Unit | 3738 |
| | Examiner Name | Bruce Edward Snow |
| Total Number of Pages in This Submission | Attorney Docket Number | KLYCD-05008US1 |

| ENCLOSURES (Check all that apply) | | |
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| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT | | | |
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| Firm Name | Fliesler Meyer LLP | | Customer No. 23910 |
| Signature | | | |
| Printed name | Suvashis Bhattacharya | | |
| Date | 11/29/04 | Reg. No. | 46,554 |

| CERTIFICATE OF TRANSMISSION/MAILING | | | |
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| Typed or printed name | Suvashis Bhattacharya | Date | 11/29/04 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

Inventor(s): Steve Mitchell
Appl. No.: 10/684,668
Confirm. No.: 3396
Filed: October 14, 2003
Title: ARTIFICIAL VERTEBRAL DISK
REPLACEMENT IMPLANT WITH
CROSSBAR SPACER

PATENT APPLICATION

Art Unit: 3738
Examiner: Bruce E. Snow

Customer No. 23910

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being deposited in the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 29, 2004.

S. Bhattacharya (Attorney Signature)
Suvashis Bhattacharya, Reg. No. 46,554
Signature Date: November 29, 2004

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. §1.56

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

It is requested that the information identified in this statement be considered by the Examiner and made of record in the above-identified application. This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56. If this is a continuation, divisional or continuation-in-part application, it is understood that the Examiner will consider all information which was considered by the Office in a parent application. MPEP §609. Such information therefore is not listed herein unless it is desired that the information be printed on a patent issuing from the subject application.

Enclosed with this statement are the following:

- ☒ Form PTO-1449. The Examiner is requested to initial the form and return it to the undersigned in accordance with M.P.E.P. §609.
- ☒ The present application is being/was filed after June 30, 2003. In accordance with the pre-official gazette waiver of 37 CFR 1.98 (a)(2)(i) posted at: pac/dapp/opla/preognotice/idswouscopies.htm, copies of cited U.S. patents and publications are not enclosed. However, copies of cited foreign patent documents and non-patent literature are enclosed in accordance with 37 CFR 1.98(a)(2), as still required, except for those items designated by an asterisk (*), which were previously submitted by the applicant in a parent application, from which benefit under 35 U.S.C. §120 is claimed, with an *Information Disclosure Statement* submitted in the parent application which

- 1 -

Attorney Docket No.: KLYCD5008US1
SBhattacharya/KYLCD/5008US1.IDS4

104.001:123103
11/29/04-10:27

complies with the September 8, 2000 or subsequent revision of 37 C.F.R. §1.98(a-c), as allowed under 37 C.F.R. §1.98(d)(1).

— The present application was filed prior to June 30, 2003. A copy of each cited document as required by 37 C.F.R. §1.98 is enclosed, except for those items designated by an asterisk (*), which were previously submitted by the applicant in a parent application, from which benefit under 35 U.S.C. §120 is claimed, with an *Information Disclosure Statement* submitted in the parent application which complies with the September 8, 2000 or subsequent revision of 37 C.F.R. §1.98(a-c), as allowed under 37 C.F.R. §1.98(d)(1).

✓ If any of the cited/submitted documents is in a foreign language, a concise explanation of relevance is provided pursuant to 37 C.F.R. §1.98(a)(3)(i). For foreign language documents cited in a search report by a foreign patent office, the requirement for a concise explanation of relevance is satisfied by the submission herewith of an English language version of the search report. MPEP §609A(3). If a written English-language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in §1.56(c), a copy of the translation accompanies this statement, 37 C.F.R. §1.98(a)(3)(ii), and satisfies the requirement for a concise explanation of relevance, MPEP §609A(3).

— ***PTA Statement under 37 C.F.R. §1.704(d).*** Each item of information contained in the *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in §1.56(c) more than thirty days prior to the filing of the *Information Disclosure Statement*.

This statement should be considered because:

— **37 C.F.R. §1.97(b).** This statement qualifies under 37 C.F.R. §1.97, subsection (b) because:

- (1) It is being filed within three months of the filing date of an application other than a continued prosecution application under § 1.53(d);
-- OR --
- (2) It is being filed within 3 months of entry of a national stage;
-- OR --
- (3) It is being filed before the mailing date of the first Office Action on the merits,
-- OR --
- (4) It is being filed before the mailing date of the first Office Action after the filing of a Request for Continued Examination under 37 C.F.R. §1.114.

✓ **37 C.F.R. §1.97(c).** Although it may not qualify under subsection (b), this statement qualifies under 37 C.F.R. §1.97, subsection (c) because:

- (1) It is being filed before the mailing date of a FINAL Office Action, a Notice of Allowance, or an action that otherwise closes prosecution in the subject application, whichever occurs first.

-- AND (check at least one of the following) --

- ✓ (1) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e).

-- OR --

— (2) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

— **37 C.F.R. §1.97(d).** Although it may not qualify under subsection (b) or (c), this statement qualifies under 37 C.F.R. §1.97, subsection (d) because:

(1) It is being filed on or before payment of the Issue Fee;

-- AND --

(2) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e);

-- AND --

(3) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

✓ **Fee Authorization.** The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 06-1325. A duplicate copy of this authorization is enclosed.

Respectfully submitted,

FLIESLER MEYER LLP

Date: 11/29/04

By: S. B. Bhattacharya
Suvashis Bhattacharya
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| | | | |
|------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|-------------------------------------------------|-------------------------------------------|
| TO-1449 (Substitute) Information Disclosure Statement BY APPLICANT (Use several sheets if necessary) | U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE | Attorney Docket Number KLYCD-05008US1 | Serial/Patent Number 10/684,668 |
| | Applicant/Patent Owner Steve Mitchell | | |
| | Filing/Issue Date October 14, 2003 | Group Art Unit 3738 | |

U.S. PATENTS

| Examiner Initial | | Patent Number | Issue Date | First Named Inventor | Class | Subclass | Filing Date |
|------------------|----|---------------|------------|----------------------|-------|----------|-------------|
| | 1. | 2,677,369 | 05/04/1954 | Fred L. Knowles | 128 | 92 | 03/26/1952 |
| | 2. | 3,648,691 | 03/14/1972 | William V. Lumb | 128 | 92 | 02/24/1970 |
| | 3. | 5,011,484 | 04/30/1991 | Francis H. Breard | 606 | 61 | 10/10/1989 |
| | 4. | 5,496,318 | 03/05/1996 | Robert S. Howland | 606 | 61 | 08/18/1993 |
| | 5. | 5,609,634 | 03/11/1997 | Gilles Voydeville | 623 | 17 | 06/30/1993 |

U.S. PATENT PUBLICATIONS

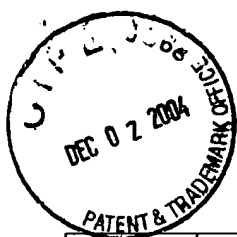
| Examiner Initial | | Patent Application Publication Number | Publication Date | Applicant |
|------------------|--|---------------------------------------|------------------|-----------|
| | | | | |

PENDING U.S. PATENT APPLICATIONS

| Examiner Initial | | Application Number | Filing Date | First Named Inventor | Petition to Expunge? Yes No |
|------------------|--|--------------------|-------------|----------------------|----------------------------------|
| | | | | | |

FOREIGN PATENT DOCUMENTS

| Examiner Initial | | Document Number | Publication Date | Country | Class | Subclass | Translation Yes No |
|------------------|----|-----------------|------------------|---------|-------|----------|-------------------------|
| | 6. | EP 0322334 | 06/28/1989 | Europe | A61F | 5/02 | ✓ |
| | 7. | FR 2724554 | 03/22/1996 | France | A61B | 17/70 | ✓ |
| | 8. | FR 2722088 | 01/12/1996 | France | A61B | 17/70 | ✓ |



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| 9. | FR 2705227 | 11/25/1994 | France | A61F | 2/44, 2/46 | ✓ | |
| 10. | FR 2722980 | 07/26/1994 | France | A61F | 2/44 | ✓ | |
| 11. | DE 3113142 | 01/14/1982 | Germany | A61B | 17/18 | ✓ | |
| 12. | GB 780652 | 08/07/1957 | Great Britain | A61F | | ✓ | |

OTHER DOCUMENTS (Include author (if any), title, publisher and place of publication, date and pertinent pages)

| | | |
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ExaminerDate Considered

***EXAMINER:** Initial if citation considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

*1 = Copy not submitted because it was submitted in prior application SN / _____, filed _____, 20____, relied on under 35 USC §120.

*2 = Copy not submitted because it was submitted in prior application SN _/_____, filed _____, 20____, relied on under 35 USC §120.

STATEMENT

(Attachment to Information Disclosure Statement)
(Use only if required)

- ✓ 37 C.F.R. §1.97(e)(1). THE UNDERSIGNED ATTORNEY HEREBY STATES THAT each item of information contained in this *Information Disclosure Statement* was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this *Information Disclosure Statement*; or
- 37 C.F.R. §1.97(e)(2). THE UNDERSIGNED ATTORNEY HEREBY STATES THAT no item of information contained in this *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart foreign application and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this *Information Disclosure Statement* was known to any individual designated in §1.56(c) more than three months prior to the filing of this statement.

Respectfully submitted,

FLIESLER MEYER LLP

Date: 11/29/04

By: S. Blath
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